

THE  
Parsons Guide:

OR THE  
L A W  
O F  
TYTHES:

*wherein is shewed,*

Who must pay Tythes, and to whom,  
and of what things, When, and How they  
must be paid, and how they may be reco-  
vered at this day, and how a man may  
be discharged of payment therein.

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By W. <sup>William</sup> SHEPPARD, Esq;

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L O N D O N :

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# Partons Guides

ON THE

W A

O F

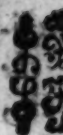
# TYTHES

Who must pay Tythes and to whom  
and of what things. With the  
reasons for the same, and the  
manner of paying the same.

BY W. SHEPARD, ESQ.

L O W D O M

Printed by R. Gutteridge, one of the Stationers,  
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TO THE  
READER,

**I** Having formerly made  
this Treatise of Tythes  
for my own private use,  
it came into my thoughts  
how much strife there was  
every where about Tythes and  
Duties, wherein the Parson  
or Vicar as well by the present,  
as the Ancient Laws of this  
Kingdome hath as good right  
and property as any man hath  
to the other remaining parts  
of the profits of his Estate;  
and being satisfied that Tythes  
are not Antichristian, as  
hath been by some late Pam-  
phlets asserted, but were due

## The Preface.

and payable when Romes Religion was a stranger to the Ancient Saxon Church, which does in all things agree with us now; and which did allow of Tythes and other duties to the Holy Church: and that appears by several of the Ancient Records of this Kingdome, as first the Law of Offa King of the East Angles about the year 793. by which he gave to the Church the Tythes of all his substance then the most excellent and free donation of Æthelwolphe at Winchester in the presence of the Kings of Mercia and the East Angles, all his Nobles and Bishops consenting thereto, he was Heire and Successor to that Egbert King of the West Saxons, that converted the Heptarchy into a Monarchy, the seven King-

domes



## The Preface.

domes into one; and having gotten all the Lands of England into his possession, he conferred the Tythes of all upon the Church. And this so famous a Record is not mentioned by one but divers Historians, as Sir Henry Spelman observeth in his Annotations upon the place; 'tis remembered by ancient Asser also, that wrote the Life of King Alfred; Alured, and Guthurn Kings of the Saxons and Danes; in that mutual league of both Nations provided about 876. If a Dane pay not his Tythe let him be punished as a transgressor by the Law, and the English must be fined: King Ethelston obliged himselfe and all his Nobles and Bishops to pay the Tythes of Cattel and of the Fruits of the Earth: King Edmond with his

## The Preface.

Nobles and Ecclesiastiques about 946. Pronounced a Curse upon every Christian that did not religiously pay his Tythes. Then the Laws of Edgar about the year 967. that of Ethelred in the year 1009. and of Canutus 1032. by all which it may plainly appear how ancient the Laws have been in the Realm in behalf of Tythes, nor were those ancient Royal Decrees made but at times when the Church then extant flourisht, not only in her innocency, but free from Romes slavery; and that plainly appears.

First, By those ancient Manuscript Homilies extant in Bennet College in Cambridge, when that incomparable Knight, Sir Henry Spelman, that hath deserved so well of all the lovers

## The Preface.

of Learning and this Nation,  
was evening his Saxon Le-  
cture in that Univerſitie,  
wherein as Mr. Wheelock,  
the then Reader, hath well  
observed, That thoſe Homi-  
lies do not only inculcate  
ſanctification of the Saboth,  
and other Pieties, but the  
greateſt part, if not every  
one of the Articles of Re-  
ligion maintained amongſt  
us is aſſerted.

Secondly, From one of  
thoſe Saxon Sermons not on-  
ly recorded by Mr. Fox, but  
Printed by it ſelf in the very  
beginning of Queen Eliza-  
beths dayes, and attested by  
fourteen or fifteen Biſhops  
(ſome of which were Confes-  
ſors and Exiles in Queen  
Maries time) to be agreeable  
to the old Original, wherein  
all or moſt of the Romiſh Points  
and

## The Preface.

and Doctrines are confuted :  
And then after this Nation  
had recovered freedom from  
under the Romish Mytre,  
and shook of that Yoke that had  
lain so heavy; Tythes had  
been retained, if thought to be  
Popish or Antichristian, and  
Edward the sixth, in whose  
time so many famous Laws  
were made against that See,  
and all her introduct Do-  
ctrines, was so far from decla-  
ring any thing against Tythes,  
that he made Laws in the be-  
half of them; much might be  
said of him, as that of the Ec-  
clesiastical Reformation be-  
gun in Hen. the eighths time,  
and brought to some perfection  
in Ed. the sixths time; a work  
first assigned to thirtytwo choice  
men, and after left to Arch-  
Bishop Granmer, who took  
an Assistants, Walter Had-  
don,

## The Preface.

don, Rowland Taylor and Peter Marryn, who so compiled it as it is now extant, wherein there is a distinct Title of Tythes, and 19 Chapters, and surely if those four godly learned men, one pair of whom were glorious Martyrs had thought them to be Antichristian, they would not have been so serious about them, they that dyed for Christ would not have dyed, allowing any Error of Antichrist; in their blessed opinion, I hope the Reader is, since it is his desire that hopes to close his eyes with the same, who is, your well-wishing Friend. ○

THE

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# Parsons Guide.

## CHAP. I.

*Of a Parson and Vicar, his  
Parsonage and Vicarage,  
and Profits belonging to  
them.*

**T**HE Parson at first was  
he that had the charge  
of a Parish-Church,  
and was called the Re-  
ctor of a Church; but he is most  
properly so called, that hath a  
Parsonage where there is a Vi-  
carage endowed.

The Vicarage is a certain  
portion of the Parsonage allow-

red to the Vicar for his maintenance. And this portion in some places is a sum of money. ~~Common~~ In other places it is a part of the Tythes in kind, and commonly the smaller Tythes; but in some few places the Vicar hath part of the great Tythes also: and he that hath the right to, and possession of this, is called the Vicar: and he that hath the other part, is called the Parson, who in some Parishes is the Minister of the place, one they call a Clergy-man or Minister; and in other places he is a Lay-man, where it is an Impropriation.

Parson in a legal signification is taken for the Rector of a Church Parochial, *Persona Ecclesie*, because he assumeth and taketh upon him the Parsonage of the Church, and is said to be seized in *Jure Ecclesie*. That in his person the Church may sue for, and defend her Right, and be sued by any that have an elder and better right.

And



And when the Church is full,  
it is said to be *plena & consuetudo*  
of such a one Parson thereof,  
that is, full and provided of a  
Parson; that may *vices seu per-*  
*sonam ejus gerere, persona impar-*  
*sonata. Parson imparsonate*, who  
is the Rector that is in posses-  
sion of a Church Parochial, be  
representative or appropriate,  
that may *vices seu personam ejus*  
*gerere.*

The Vicar is one that hath a  
spiritual promotion or living,  
which is called a Vicarage, which  
is a certain portion of a Par-  
sonage allowed to the Vicar for  
his maintenance.

The profits and fruits of a Par-  
sonage or Vicarage, belonging to  
the Parson or Vicar, are his  
Glebe Land, (if there be any)  
Tithes, obventions, Offerings  
and Tythes.

The Glebe is that portion of  
land, Meadow, or Pasture,  
that is belonging to, and par-  
t of the Parsonage or Vicar-  
age, over and above the Tythes.

Oblations, Obventions and Offerings seem to be but one thing, and that which was called meerly Spiritual. The Oblations were said to be such things real or Personal, as were offered to God and his Church by Testament or otherwise. And Obventions did include Oblations and other things now unknown and lost amongst us. And of this nature it seems the Mortuary is. And the other profits are the Tythes.

Offerings are reckoned amongst personal Tythes, which are such as come by mens honest Labour and Industry, in some personal work, Artifice, or negotiation, as by buying, selling, merchandizing, or by the Labour of the Hand, as Craftsmen, such as are Carpenters, Masons, Fishers, Fowlers, Hunters, and the like. And these personal Tythes are the money that is paid in some places for mens Trades of profit to them, as Fishing, &c. But not such



such as Fish for pleasure: And so in some places Servants pay the Parson or Vicar a small sum in the nature of an offering, a tenth of their clear gain once a year, which is still to be paid according to the custom of the place. (Croo. 1. 247.)

## CH A P. II.

### *Of Tythes, and their kinds.*

**T**ythes are a certain part of <sup>what they</sup> the fruit or lawful increase <sup>are.</sup> of the earth, beast, or mens labours, which in most places, and of most things is the tenth part, and hath been by the Law given to the Ministers of the Gospel, in recompence of their labour in the execution of their Office.

*Their kinds*

There are three sorts of Tythes. Some of them are Predial, that is, such as come in, and arise yearly of the fruit and profit of the earth, such as are

B. 3 wood,

wood, corn, grain, hay, the seed of Rape, Parsley, Hops, Saffron, Woad, Flax, Hemp, Darnel or Cockle, Fennel, Annise, and the like. Such are the fruits of Trees, as Apples, Pears, Plums, Nuts, Cherries, Wardens, Grapes, Mast, Acorns, and the like. Such also (as it seems) are Herbs, as Rue, Sage, Mint, and the like.

Tythe-hay also is prædial. So it is in a Meadow great or small, or in any place or Angle within the Parish Tything-table.

Some of them are Personal, and they are such as arise and grow due by the profits that come by mans honest labour and industry in some Personal work, Artifice or Negotiation, as by buying, selling, merchandizing, or by the labour of handicrafts men, such as are Carpenters, Masons, Fishers, Fowlers, Hunters, and the like.

And some Tythes are said to be mixt, such are the profits of some

some things that waile partly  
from the labour and care of  
men, and partly from the earth  
where the things are fed: of  
this sort are Cattle, as their  
young Calves, Lambs, Kids,  
Roe, the wool of Sheep, milk  
and cheese of Cowes, so the  
eggs and chickens of Hens,  
Geese, Ducks, and Swans, and  
the like.

Amongst Predial Tythes,  
some of them are said to be  
greater, as Wood, Corn, Hay,  
and the like. And some of  
them are lesser, as the Tythe of  
Herbs, Flax, Hemp, and the like.  
And all these of the one sort,  
and of the other, the dispute  
is under the names of Tythes of  
harvest fruits, of woods sel-  
led and preserved to grow a-  
gain: of wood not in use, nor  
apt for Timber, but for the fire;  
of trees planted for fencing of  
grounds in fields, pastures,  
and hedge-rows, of Trees  
growing in fenceable and moo-  
nish grounds, of pasture ground,

of hay, of wooll, of lambs, of calves, of pigs, of colts, of milk, of cheese, of fruits of trees, of seeds, of hemp, flax, onions, rape, of Pot-herbs; of mast, of Beech or Oak; of Mills driven by wind or water; of Parks, Warrens, Pools, Ponds, of wild Beasts under custody, &c. of Dove-cotes or Dove-houses; of bees, of fowlings, of huntings, of fishings, of swans, of geese, of eggs, of crafts and manual occupations, of Trade by wares, merchandize, &c. And about all these things especially are all the Questions and Cases that follow concerning this Subject.

For the better understanding whereof, take first of all these few general Rules and Cases.

1. That Tythes are not due or to be paid for the yearly Rent, or value of houses, but for the revenue and increase of things: for, a *Mans* *dis-*  
*wand* can hardly stand, to rise and fall according to the Rent  
by





by prescription. Yet that kind of  
payment in *London* used there, is  
good there by Custom. *Hob. 11.*

2. That Tythe naturally is  
but the tenth of my revenue of  
my ground, and not of my la-  
bour and industry. *Hob. 1250.*  
Where it may be divided, as in  
grass it may though not in corn.

3. That Tythes are grantable  
from Man to Man, as other things  
are. *10 Hen. 6. c. 11. 10 Hen. 6. c. 12.*

4. That in Cases of Tything,  
the custom of the place is much  
to be heeded, both for the matter  
and manner of Tything.

5. That Tythes they are lay  
Channels, for the Recovery of  
which the King and others may  
have remedy by our Law. *10 Hen. 6. c. 11.*

6. The Parson or Vicar is to  
take away his Tythes in a con-  
venient time after they are set  
forth. And if he shall suffer  
them to ly long upon the Land  
to the prejudice of the owner  
of the ground, he may have his  
Action of the Case against him  
for it. *Lay. 70.*

## C H A P. III.

*Of the Nature of Tythes.*

**T**Ythes by our Law were accounted an Ecclesiastical Inheritance, and collateral to the State of the Land out of which they come, which of common right are to be paid out of all Lands, Meadows and Pastures, and which of their proper nature originally were due only to Ecclesiastical persons by Ecclesiastical Law, and till they were severed, were esteemed meerly Ecclesiastical: for the subtraction whereof, no remedy was given by the Common Law. Neither can any union of possession extinguish or suspend them, but they remain still in esse, and ought be demanded no less to any Spiritual Person. And if a person impropriate had inclosed another part of his Glebe, or had made a Lease of it



it to him, yet he should have had Tythe thereof still; so that a man might have had Tythe against his own Feoffment, for they were not claimed in respect of any ownership in the Land, but ~~by the Law~~ by the Law of God. So if a Parson purchase Land within his Rectory, and after Lease the Parsonage, the Lessee shall have Tythe of this new purchased Land. And a Lay-man by the Common Law, could not have had an Inheritance, descendable and grantable of Tythes, as of other temporal Possessions, neither will they pass by the same words in Grants, as other temporal Possessions will do. And therefore if one grant a ground *cum proficuis & commodis et redditibus pertinentibus*, the Tythes will not pass by this. But now the Law is changed herein, for they and other Ecclesiastical Duties, especially such as came to the Crown, by the Statutes of 27 H. 8. 28 H. 8. 2 E. 6. are by those Statutes,

Statutes, and the Statutes of  
 32 H. 8. and 1 & 2 Phil. &  
 Mar. in the hands of Lay-men  
 temporal Inheritances, and are of  
 the nature of other Lands, it shall  
 be accounted Affets in the hands  
 of an Heir; the wife shall be en-  
 dowed of it, the husband Te-  
 nant by the courtesie for them:  
 real actions may be brought;  
 and they have all other incidents  
 of Lay-Inheritances. *Cook* 11.  
 14. *Dyer* 34. *Cook* 1. 3. *Cook*  
*upon Litt.* 5. 159.

By Tythes being actually dis-  
 charged and extinct by a *Decimus*  
*decimandi*; they are turned into  
 a Lay-Fee as well as the nine  
 parts. *Hob.* 42.

But that which is given in  
 lieu of Tythes is turned into a  
 Spiritual Fee. *Idem.*

And these Tythes are due to  
 the Church of common Right,  
 and were due to the Church  
 before the Council of *Lateran*  
*Hob.* 208.

If any Tythan that hath  
 Tythes be entitled of clergy or  
 of *secular* *secular*

wronged in them, or they be kept from him, he having a lawfull Interest in them or Right to them: He or his Heirs, Executors, &c. may have his remedy for them in the Kings Temporal Courts by the Ordinary way as the Case is. But this doth not take away the ordinary remedy that men may have in the Ecclesiastical Courts. Hence it is that the Law is as it was before the Statutes. *Dyer 133. Ca. 11.*

#### CHAP. IV.

Who must pay Tythes, at this day, and to whom, and who are capable of receiving and retaining of Tythes, and by what Title, and how.

nizen

nien, is bound to pay the same  
 that cannot show a special ex-  
 ception and freedom, by com-  
 position, custome, prescription,  
 or some Act of Parliament. So  
 the Kings have paid no Tythe  
 sometimes for their Lands in  
 their own hands. So neither  
 the King, nor his Patentees are  
 to pay Tythe for some of his  
 ancient Forreign Lands that lye  
 in no Parish, or between two  
 Parishes, this is not so pay  
 Tythe. And so the Vicar in  
 some places doth pay no Tythe  
 to the Parson, so long as his Vi-  
 carage-Land is occupied by him-  
 self. *Cro. Jac. 60. Crook 2. 44.*  
*Bras. Dismiss 10.* And it is said  
 If a Bishop had held Land pur-  
 charged of Tythe, and made  
 Feoffment or Lease of it, that  
 his Lessee or Feoffee shall not  
 pay for it, *Coke 2. 44.*

And as to the persons to  
 whom and capable of receiving  
 Tythe, as by the Common  
 Law anciently, no Lay person  
 was capable of them, but only

by way of discharge, as where  
 a Parson had compounded  
 with the Vicar or Parson for  
 his own Tythe: Yet at this day  
 any man may have them as other  
 Lay-Inheriuances; and Lay-  
 men (as they call them) as well  
 as Clergy-men, have them. And  
 to make Clergy-men capable of  
 them, there were heretofore  
 many things required, as Exa-  
 mination and allowance by the  
 Bishop, subscription to the  
 Articles of Religion, Institu-  
 tion and Induction into the  
 Parsonage or Vicarage, to  
 which the Tythes belong. But  
 in these things the Laws are  
 changed at this day. And there-  
 fore it seems such a Parson once  
 capable of Tythes, cannot be  
 made incapable afterwards as  
 heretofore, unless it be where  
 he hath one Benefice of 8. *Plurality.*  
 years and he take another: for  
 in this Case it seems he shall lose  
 the first. But for this see the  
 Statutes of 21 Hen. 8. 13. and Hen.  
 8. Cook 4. 79. & 6. 20.

*Prescription*

A Parson or Vicar may have Tythe out of his Parish, by a special prescription. Or he may prescribe to have a sum of Money for Tythes within his Parish of any certain man there in lieu of Tythes. And also another man may have Title to a portion of Tythes by prescription. *Bro. 85. Cook 11. 19. Book of Entries. N. B. f. 9. Cook 2. 45. Cook 4. 49.* And a man may have his own Tythe of the Parson by a agreement between them, for the Parsons life, or how they please.

The Parson may have the great, and the Vicar the small Tythes; And suffer it to be reckoned amongst small Tythes, so that if it be in a great Field where was Corn, that the Parson had; if it be now sowed to Saffron, the Vicar not the Parson shall have it. And if new Corn be sowed in a Field or Orchard, the Parson shall have it, though the Vicar had what was sowed before.







## CHAP. V.

Of what things Tythe is to  
be paid, and of what not,  
and out of what Land, and  
how.

IN general, the rule is, that  
Tythes must be paid of all  
things that are of profit, and  
that arise from year to year,  
especially of the things wherein  
the industry of man is helping,  
as in all things it is more or less  
helping. Cook II: 160 Psal. 144.  
v. 3. 37. 44. 8. 70. And so  
it is to be paid for, and out of  
all things within (not without)  
the Parish, that arise, grow,  
and happen from year to year  
by the Act of God alone, or by  
the Act of God and man toge-  
ther. But more particular-  
ly Tythes are to be paid of Hou-  
ses and Mills. First, Regular-  
ly.

ly any Tythe is to be paid out of  
Houses of habitation, nor out  
of the Rent reserved for them  
being let. But by a special cu-  
stome, or by an Act of Parlia-  
ment (as in *London*) there it may  
be Tytheable. And as time out  
of mind it hath been used, so be  
paid for them, there the same  
must be paid still. The Tythe  
for houses in *London*, is 2 s. 8 d.  
for every pound of the Rent.  
And this is to be raised and  
made up according to the usage  
and custom of the City. *Co. Pl.  
26. F. N. B. § 3. 37 H. 8. cap. 12.  
32 H. 8. cap. 7. More, case 12. 86  
Hob. 11. Co. 11. 16.* And  
prescription to have Tythe of  
houses according to the Rent, is  
not good; for no Tythes are to  
be paid for houses in any City  
but *London*, *Hob. 11. 16.* And the Act of 2 E. 6. cap. 3  
is not to reach *London* or *Canterbury*, or the Suburbs thereof,  
nor to any other Town or City  
where the inhabitants thereof  
have been used to pay Tythes by  
houses,

houses, *Cra. Abridge. case 3534*

*Tran. 1. 25.*

All sorts of Trees, but Timber-trees, are to pay Tythe (that is) their tenth of increase, living or dead, used or sold by the owner, for the body, branches, bark, fruit, root and branches that grow out of the root. And within this rule all fruit-trees, as Apple-trees, Pear-trees, Nut-trees, Walnut-trees, and the like, are to yield the tenth of their increase of fruit yearly, and if they be cut down, the tenth of the body whether sold or kept; and if they be pared, the tenth of their parings; whether sold or kept. So Tythe is to be paid of the fruit, body, bark and branches of all other trees not apt to Timber, as Willows, Salix, though they are above twenty years growth, or of any age whatsoever, and were never cut before. So also Tythe is to be paid of *Silva cedra*; that is, Cedarwoods and Copices felled.

led and preserved to grow a gain, and which by good husbandry may grow again. And of all these things the Parson is to have the tenth part, as the owner hath, and at the same time when the owner doth receive his nine parts.

*Of wood cut for his own use.*

But of the Underwoods or Coppices, parings of Fruit-trees, or other trees cut only for mounds, or for plow-gees for hedging and fencing of the Corn-fields or other ground within the Parish, or for fuel for the maintenance of the plow or pail, no Tythe is to be paid for it, though the Vicar have the Tythe wood, and the Parson the Tythe of the places inclosed. Nor is Tythe to be paid of Underwoods, which are digged up by the roots. Nor (as it seems) for the wood of Coppices or trees that a man doth cut or spend in his own house-keeping, though he spend much, by *Hobbar* Chief Justice. But if a Parson can alledge a special custom

custome for it, he may have  
Tythe for this also, *M. 4. Jac.*

*E. R.*

But for Timber-trees, such <sup>Timber</sup>  
as are Oak, Ash, and Elm,  
which are esteemed Timber after  
they are twenty years old in all  
Countries; and Beech, horse-  
beech, horn-beam, maple, aspe,  
and hazel, any of which may be,  
and are esteemed Timber in some  
Countries, as the usage of the  
Countrey, or the plenty or  
scarcity of other Timber there,  
is; for these, either living or  
dead, for their bodies, bran-  
ches, bark, roots or germines  
that grow out of them, no Tythe  
is to be paid at all, in any case;  
but Tythe is to be paid for all  
this Timber wood, if it be cut  
within twenty years after the  
first planting of it. *More, Case*

*1271.*

Tythe shall be paid of Birch  
but not of Oaks. *More, Case*

*1271.*

Nor of dotards or the bran-  
ches of Trees of twenty years  
growth.

growth. *More, Case 1272.*

And for Birch above twenty one years growth, Tythe shall be paid. *More, Case 1270.*

No Tythe shall be paid for broom or fuel spent in any house of the Parish. One may prescribe to pay the tenth cheese between May and August, for all Tyth-milk within the year, and not the tenth part of the milk; for the cheese is made by labour and charge. *More, Case 1279.*

For the opening whereof (in relation to the Wood and Trees) further, these things are to be known.

1. If the Parson have Tythe of his fruit of a tree, and the same year the Owner doth fell the tree, and make it into billets or fagots, in this case the Parson shall not have Tythe for the tree; for it is a rule, that he must not have Tythe of one thing twice in one year.

2. Beech in a Country where there is abundance of it, is not

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to be decanted Timber; nor to  
 be Tythe-free. 16 Jac. Co. B.

3. Cheney, woods in Bucking-  
 hamshire have been adjudged  
 Timber and Tythe-free. Pasch.  
 17. Jac. B. R. 20. 21. 22. 23. 24. 25.

4. If a man lop a Tree under  
 twenty years growth, and after  
 suffer the body to grow past  
 twenty years growth, and then  
 lop it again, into this case no  
 Tythe shall be paid for it, though  
 it were not Tythe-free. at the  
 cutting. Co. B. by the  
 whole Court. 8. Brown. 3. part  
 33. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.

5. If wood be cut to make  
 hedges, which is not Tytheable,  
 and there be a little remaining  
 or left of it, no Tythe shall be  
 paid for this remnant.

6. If wood be cut down and  
 employed for Hop-poles, where  
 the Parson or Vicar hath  
 Tythe-Hops; in this case he  
 shall not have Tythe of Hop-  
 poles.

7. If a great Wood doth con-  
 sist

list for the most part of Underwood, which is Tytheable, and some great trees of Beeches or other wood grow scattering amongst them; in this case Tythe may be paid, and must be, unless the usage be otherwise of all both great and small together. And so if a Wood do consist for the most part of Timber-trees, and there is some small parcel of Underwood or bushes growing in the same Wood, no Tythe shall be paid for this Underwood or bushes.

*Trin. 19. Jac. B. R. Adjudg. 16. Fac. in C. B. Leonard's Case.*

8. No Tythe is to be paid of Common of Estovers, the wood that he burns in his house.

9. No Tythe shall be paid of Willows that grow in the soyl of a Mannor, when felled, though it be wast to fell them. *Hob. 219.*

Nor shall they be paid of Willows within a Countrey, where they are used as Timber. *Hob. Idem.*

Tythes



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Tythes shall not be paid of Beeches above twenty years of growth being Timber, nor of Oaks decayed that are not Timber, and be converted to firewood. *More, Case 716.*

No Tythes shall be paid of the Lops of Trees over twenty years growth. *More, Case 158.*

For Agistment, Tythes shall not be paid, nor for wood for hedgward to inclose Corn, nor for fuel for Estovers, nor for ditching in the Marshes. *More, Case 941.*

Nor of Slates or Quarries of Slate or Cole. *More, Case 1275.*

Timber-trees once discharged of Tythes shall be for ever discharged, though *mortua. Croo.* 3. 477.

If one gain Land from the Sea *Ferry Land* by great cost, and turn it to ar- *drayned.* table, he must pay Tythe of it. *Bulstr. 8. 165.*

See for all these matters, within this point of Trees and  
C Wood,

Wood, *Crok Rep.* 11. 48, 49. 81.  
*Flon.* 470. *Brownlow's Rep.* 1.  
*Part.* 94. 2. *Part.* 130. *D. & St.*  
 169. Where and how this is to  
 be paid and delivered, see more  
 in *Chap. 5. Sect. 1.*

*Sect. 2.*

*Of Mines  
 and Quar-  
 ries.*

No Tythes are to be paid of  
 Mines or Quarries, of Iron,  
 Brass, Tin, Lead, Coals, Stone,  
 Tile, Brick, Lime, Gravel,  
 Marle, Chalk, and the like,  
 which a man doth find and make  
 in his own Land, for they are  
 parcel of the Inheritance, and  
 the Parson or Vicar hath Tythe  
 of the Corn and Grass upon  
 the ground; and it is a rule,  
 the Land must not pay a double  
 Tythe; and besides it is not a  
 yearly profit. *Register* 51. *Fitz.*  
*Nat. Brev.* 52. 9. *Broo. Dissem.*  
 18.

*Of Houses.*

No Tythes regularly are to  
 be paid for houses of Inhabita-  
 tion, nor of any rent reser-  
 ved upon any demise of them:  
 for Tythes are to be paid of  
 things that renew yearly by the  
 act of God. But by a special  
 custome,

custom, or by an Act of Parliament, as in London, where the Parsons have 2 s. 9 d. out of every pound rent in lieu of Tythe, there it is good enough, Cook 11. 16. Fitz. Nat. Brev. 53. 37 Hen. 8. cb. 12.

If any barren heath, or waste ground, that is barren in his own Nature, and that cannot be fitted for husbandry without an extraordinary charge, although it may pay Tythe of Wooll, or Lamb, or any things, or the Tythe that it formerly paid, yet shall it pay no Tythe in Corn for seven years after they have by their husbandry improved it, and made it fit for Tillage, But if a Wood be cutted up, and made fit to plough, this must pay Tythe presently. So if it become barren by a sudden accident of inundation, or the like, or by being overgrown with bushes, or the like, and it be reduced, it must pay Tythe presently.

Of Barren  
Heath and  
Waste  
Grounds

11. Jac. C. B. Sbaringtons

C 2

Cases

*Case, Dyer 170. 2 Ed. 6. Ch.*  
 13.

And if its barrenness be not by nature, but by ill husbandry or neglect, it shall not for this be discharged of Tythes for the first seven years; upon the Statute. *More, Case 1278.*

Fenny Land drayned shall pay Tythes notwithstanding the Statute of barren Land. *More, Case 603.*

Tythes shall not be paid of ground that is *Inapte natura* barren. But if Underwoods be digged up by the Roots, or hedge-rows, these shall pay Tythe. *M. 11. Jac. C. B.*

*of Mills.*

Tythes are to be paid for new Corn-mills, be they water or water Mills; and for Fulling Paper, or Apple Mills, which are common and publick Mills, and whether they be driven by wind or water, some Tythe other is to be paid for the same. But for an Old Corn Mill, no Tythe was ever paid for, Tythe is to be paid, *except*

person

personal Tythe, as for a Trader of profit, and so it will be for the other Mills. But see how it is to be paid, Chap. 5. Sect. 1.

Tythes are to be paid of all new Corn Mills, be they Wind, or Water Mills.

And for Fulling Mills, Paper Mills, or Apple Mills that are common and publique Mills, (whether they be driven by wind or water) some Tythe or other is to be paid for them. But for an old Corn Mill for which no Tythe was ever paid, no Tythe is to be paid, (except it be a personal Tythe, as for a Trade of Profit :) And so it will be for other Mills.

And the Tythe of new Corn Mills is not to be the Tenth penny of the Rent, but the Tenth measure of Corn, or the Tenth toll-dish if there be not a custome for it in the place. But the Millard for his Fulling-Mill, Rape-Mill, Paper-Mill, Iron-Mill, Powder-Mill, Lead-Mill,

Mill, Edge-Mill, Copper-Mill, and Tin-Mill, and so for an ancient Corn-Mill, is only to pay personal Tythe.

And where a Rate Tythe is paid for two Mills in one house, and one of them is made a Corn-Mill, the Tythe in kind shall be paid for this Mill.

And if one pair of Millstones be turned into two pair of Millstones, now both of them shall pay Tythe, and their Priviledge will be lost. *Pasch. 7. Jac. Johnsons Case. P. N. B. L. G. Co. 244. Brownl. R. 31.*

And yet so forth of a Ful-ling-Mill that Fulled every week forty cloathes, by which they gained 2 s. a cloath, it was held no Tythe was to be paid for them. *Croo. 2. Abridg. cap. 2638.*

And if a Mill be erected up- on Land discharged of Tythes by the Statute of Monasteries, Tythe must be paid. So where- ever:



ever it be erected of a new Mill  
set up in a mans own ground.

*Cron. 2. Albrig. Case 1542.*

But no Tythe is to be paid for  
a new Iron, Fulling, Lead, Pow-  
der, Edge, Copper, and Tin,  
for these are but Engines of  
their Occupation, *Fabufens Cases*  
*Pascb. 7. Jac. Cron. 2. 1532.*  
*Bulfr. 3. 212.*

For Stables in London, no  
Tythe is to be paid. Nor will  
a Prescription lye for this. *Hob.*  
*10. 112.*

Tythe is to be paid, (that is)  
the Tenth part of the profit of  
all the Closes, Grounds, and  
pieces of earable Meadow and  
Pasture within a Parish. Sow-  
ed to wheat, barley, beans, pease,  
and the like, all which are to  
be set out according to the Sta-  
tutes, and the use of the place.  
*Brownl. 1. 14.*

If the Parson demise his glebe of Corn,  
to a Lay-man, the Lay-man  
shall pay Tythe of it. But if  
he keep it in his own hands  
*Contra. Owen 35.*

**Of Turves.**

Tythes are to be paid of Turves that grow in fennish and moorish grounds, when they are used for firing.

**Of Heath, Furs and Broom.**

Tythes shall be paid of Heath, Furs and Broom, unless the owner can prescribe, or make good a special custome of payment of milk or calves, &c. of the Cattel kept upon the ground. *M. 29 El. B. R. Adjudg.*

**Sett. 3. Of Grass, cut or eaten.**

Tythe is to be paid of the grass growing on the ground, whether it be cut for hay, or eaten by cattel, to be set out according to the custome of the place: and as to this kind of Tythe these things are to be known.

**Rate Tythe.**

A rate Tythe to be paid according to the custome of the place for the feeding of Sheep and all other Cattel, ( save only Oxen that labour, and the young Cattel that are bred for Oxen or Cows ) as for Horses and Cattel that are fatted; for Tythe must be paid for these,

these, for the Pasture and profit of the Cattel, whether they go on the Common or elsewhere.

2. If two Parishes together have Common, because of vicinage, and the Cattel of the one side do stray to the other side, and there abide, in this case no Tythe shall be paid for this to the Parson of the Parish where the Cattel do stray, but to the Parson of the other Parish. So if Sheep stray out of one into another Parish, and there yeane, no Tythe is to be paid for this to the Parson of that place; but if they go there by the space of one Month or more, for this a rate Tythe must be paid to that place where they are for a Moneth together. And so in all cases where Sheep go a while in one, and another while in another Parish.

*Item. 7 Feb. B. R. Broo. Dismiss.*

3. If Sheep after they be shorn die before *Easter* next following,

(34)  
it is said no Tythe shall be paid  
for their wool, unless the Par-  
son or Vicar that claims it,  
can alledge a special prescrip-  
tion for it. So no Tythes are  
to be paid of the pelts or fells of  
sheep which die of the rot, with-  
out a special prescription for  
it. *Trin. 3. Car. B. R. Affien's*  
*Case.*

*Grounds*  
*let.*

4. Tythe must be paid for all  
the grounds within the Parish;  
and therefore if the grounds  
within the Parish be let, or the  
herbage there be sold to a stran-  
ger out of the Parish, the Tythe  
must be paid to the Parson, and  
that by the Owner of the Cat-  
tel, unless the course there be  
otherwise.

*Agistment,*  
*or tack of*  
*Cattel.*

5. It seems Tythe is to be  
paid for the Agistment, that is  
taking in of Cattel of strangers  
in the parish: And that to be  
paid by the owner of the Land  
that took them in, and not by  
the owner of the Cattel, for  
the Parson may not know the  
owner of the Cattel. *17 Jac. B. R.*

*But*

But if there be any customs against it, this may prevent it, and make it payable by the stranger.

6. No Tythe is to be paid *Horses.* for the herbage or feeding of riding horses, that the Parishioner doth use for his own riding. And if a man let out his own Pasture Lands, reserving the pasture for one horse to ride about his own affairs, or for husbandry, no Tythe shall be paid for the Pasture for this horse. But if a man keep or breed a horse or horses, in his pasture to sell them, there Tythe shall be paid for the horses pasture. *H. 15. Jac. B. R. Hides Case.*

7. No Tythe is to be paid *Plough- Catel.* for the grass eaten by the working Oxen or Horses about Husbandry that are used in the Parish about Husbandry. But if the Parishioner use them to other purposes within the Parish, or for Husbandry without the Parish, it may be otherwise.

Wife. *M. 8. Jac. Co. B. in Baxters Case.*

*Sect. 4.  
Cows and  
barren  
Cattel.*

8. No Tythe shall be paid for the feeding of Cows that give milk, nor for barren and dry Cattel that are bred for the plough or pail, whether they feed in the inclosed, or in the common grounds of the Parish. But if a man keep Cattel untill they are ready for the pail or the plough, and then sell them and make profit of them, in this case he is to pay Tythe for them; for if the owner seed his ground with Cattel that bring no profit to the Parson, he must pay Tythes for them. *M. 8. Jac. Co. B. Baxters Case. Trin. 9. Jac. B. R. The whole Court.*

*Strangers  
renting  
within the  
Parish.*

9. If a stranger seed a ground within the Parish with his Cattel that do bring no profit to that Parson or Vicar, he is to pay Tythe for it. And therefore it seems reasonable, though it be his own ground that is the stranger, and he seed them with his own Cattel that do work in.

in another Parish, that he should pay as a stranger that doth rent a ground within the Parish.

10. No Tythe is to be paid *Eamouth*, of the Eamouth or after-pa- or after-  
sture, after the grass is mowed *pasture*,  
and Tythe hath been paid of it, unless by covin there hath been more grass left than is usual. Nor is there any Tythe to be paid for the herbage of the Cattel that eat up the same grass, unless there be some fraud in the case. *Pasch. 17.*

*Jac. Co. B. Adjudgo. M. 6. Jac. Co. B. Smiths Case. More, Case. 1230.*

11. No Tythe is to be paid for the grass or herbage of the stubs, or meers of ground at the Lands end, and adjoyning to the arable Land, where the Land it self doth pay Tythe. And so if Lands lie fallow every second or third year, the Owner shall pay no Tythe for the pasture of this Land, nor for feeding upon the stubble, albeit  
it.

it be fed with barren Cattel.  
*Pasch. 7. Jac. Co. B. Adjudg.*  
 And yet if he keep it lay be-  
 yond the course of Husbandry,  
 in this case he is to pay Tythe  
 again.

12. No Tythe is to be paid  
 for the herbage of the ground  
 whereupon Corn hath been  
 sown that hath paid Tythe, no  
 more than for the raking of the  
 Rubble. *Pasch. 7. Jac. Co. B.*  
*Adjudg.*

*Rakings of  
 Rubble.*

13. If a man bring a flock of  
 Sheep to dung the Land, and  
 they come by night only and  
 lie there, no Tythe is to be  
 paid for this; but if they feed  
 there half their time, they will  
 be Tytheable.

For the time when and how  
 these Tythes are to be paid and  
 done, see in *Chap. 5. Sect. 1.*

*Sect. 5.  
 Of Corn  
 sown.*

Tythes are also to be paid of  
 all such things as come in year-  
 ly by the blessing of God, and  
 the industry of the party toge-  
 ther. And therefore Tythes  
 must be paid of all kind of Corn  
 sown.



sown upon the ground; as  
Wheat, Rye, Barley, Beans,  
Pease, and the like, to be set  
out according to the custom of  
the place. So also Tythe must  
be paid of Plants, Herbs, and  
seeds of Wood, Saffron, Flax,  
Hemp, and the like.

And as to this, these things  
are to be known;

1. No Tythe is to be paid for  
the after-rakings, or stubble of  
Corn, when Tythe hath been *After-rakings.*  
paid for the Corn it self, unless  
it be where there hath been  
stand in cutting it over-long.  
And see *More, Case 433.*  
That Tythes of the after-ra-  
kings is not to be paid by the  
Custom of *England.* And one  
may prescribe against it to pay  
it in another manner. *Eroo. A-*  
*bridg. Case 1432. 1361.* Yet if  
the owner shall leave standing  
Corn to bind up his rakings,  
he must pay Tythe of that stand-  
ing Corn. *Term, 2. 30.*

2. No Tythe is to be paid for  
the course Corn, as Vetches,  
Tares,

Tares, and the like, which is eaten up by the Cattel that do the Husbandry there: whether it be eaten green or ripe, or eaten upon the ground where it groweth, or elsewhere, unless the Parson have a special custome for it.

*Change of  
Grain.*

3. If Corn be sowed where Woad was sown, or where other things grew, the Tythe shall be paid of this and its own kind also. So if Woad or other things be sowed where Corn hath been sowed, the Owner of the Soil must pay his Tythe, and pay it in kind of that which groweth there, as he doth in the change of wheat, Beans, Barley, &c.

4. If the Soil of an Orchard be sown with any kind of Grain, the Parson will have Tythe of it; although he have Tythe of the fruit of the Trees, for they are of several kinds.

And if the owner of the Land do not manure it, yet he must pay some Tythe or other to the Parson of it.

6. The

6. The common course of *Sett. 6.*  
 setting out and delivering *Cattel and*  
 Corn by the Common Law, is *Fowl.*

by the tenth Shock, Cock, or Sheaf. But if the custome of the place be otherwise, the Parson must sit down by it. And if there be a custome to put the Corn into shocks, and that every shock be ten sheaves, and that the Parson must have the tenth shock, so it is to be paid. But where there is no special Custom in the place to bind the owner so to do, he is not bound to set the Parsons part of the Corn up an end in shocks.

*Smiths Case. C. B.*

Tythes also must be paid of Calves of Kine, Lambs of Sheep, young Piggs of Sows, Colts of Mares, Kids of Goats, &c. Also the Cheese and Milk of Cows, Sheep and Goats, and of the wooll of Sheep, and of the Eggs and young of Hens, Geese, Ducks, &c. and of the Honey and the Wax of Bees, and for dry Cattel, and for fat.

fat Beasts sold and killed, and according to the course of the place.

For the pasturage of young barren Cattel bred for the pair or plow, no Tythe shall be paid. *More, Case, 1280. 1278.*

A penny for every milch Cow cannot be a satisfaction for Tythe of more than this one Cow, and not for other Cattel. *More, Case 1278.*

But for the further opening hereof, these things are to be known.

1. If the Parishioner have but nine Piggs, or six Calves, the Parson can have no Tythe in kind that year, without a special custome to warrant it, as in many places there is, for these things are intire, and not dividable as Wooll is. And therefore the Parson must have his Tythe *pro rata*, either in money the same year, if there be any custom for it, or in Kind the next year, and so reckon both the year together. *M. 71*

*Jac. Co. B.* And if a Parishioner have but one Cow, or milk his Cow every second day, so that he can make no Cheese, in this case the custome of the place is to be observed, so that something be paid; otherwise no custome in this case will bind; so for Calves, Colts and Kids, when they are under the number of Tythe line kind, and if there be no custome in it, the Parson must have the Tenth when ever it comes.

*It hath been said, that no Dry Cattel;* Tythe is to be paid for dry Cattel bred for the Plow or Pail, unless they be sold away before they be put to that use; for Tythe must be paid for such Cattel, and for fatted Cattel sold or killed for the house after the custome of the place. *M. 17. Jac. B. R. curia. M. 2. Jac. B. R. Wals Case.* And though at first they were bred for the plow or pail, yet if after fatted and sold, or sold, Tythe must be paid for them. *M. 8. Caroll, by*

*three*

three Justices. More, Case 623.  
and 1278.

*Flocks of  
Wooll.*

3. Tythe must be paid of the  
locks and flocks of Wooll, after  
the Wooll made up, if they be  
more than ordinary, and lest  
deceitfully; otherwise not.

*Rate Tythe  
for wooll of  
sheep, and  
of young  
Cattel.*

4. Where sheep be removed  
from one Parish to another,  
each person must have *pro rata*;  
but under three dayes, no rate  
is to be paid: As for Example,  
If forty sheep yield eighty  
pound of Wooll, and these  
have been fed and lain all the  
year in one place; in this case  
the Parson of the place must  
have all the Tythe; if the sheep  
were there but half the year,  
then he is to have but forty  
pound of the Wooll; if three  
Months only, then but twenty  
pound of the wooll; and so rati-  
bly for four or five Moneths,  
more or less. And the Parson in  
whose Parish the sheep lay and  
fed but one Moneth, he shall  
have only the Tythe of the  
twelfth part of the wooll. And

If the sheep feed all the year in one Parish, and lie in another Parish, the Tythe shall be divided betwixt the Parsons. And if sheep come from one place, and be shorn in a place where they were not before, it seems the Tythe must be paid where the sheering is, unless it appear to be paid to the Parson of the place from whence they came. And so of the young of Cattel, Lambs, Calves, Piggs, Colts, and the like, where the Dam was removed from one place to another, a rate Tythe must be paid to the Parson according to the times of their abode in the several places, from the times of their engendring by the Moneth rate.

*Bro. Dismer 16.*

5. If any have Cattel Tytheable feeding in any waste place, not commonly known to be in any Parish, yet the Tythe thereof is to be paid, and to be paid to the Parson of the place where the owner of the Cattel doth dwell.

6. When

6. When the Tenth part of the Milk is paid, there must be no Tythe paid of the Cheese which is made of the other nine parts of the Milk. And so where Tythe is made for the Cheese, no Tythe is made for the Milk.

But see more of this, and when, and how this is to be paid and delivered, in Chap. 3. Sect. 2.

*Sect. 7.  
Of Parks,  
Warrens,  
Pools and  
Dove-hou-  
ses.*

*Coneys,  
Fish, Pid-  
geons.*

Some Tythe is to be paid of Parks, Warrens, Pools, Ponds, and Dove-houses, and for Coneys, Pidgeons, and Fishes. And some would have Coneys in a Coniger, Fish in a Pond, or several fishing in the nature of Predial Tythes, and that Tenth of the profit is to be allowed.

But for the opening of this, take these things.

1. That where the things bring in a certain profit, and without much charge, as Coneys, Fish and Pidgeons, there is great reason the Parson or

Vicar



Vicar should have the full Tythe of them; and in these cases a division may be easily made.

2. The Pidgeons are a sensible loss to the Parson in the destruction of Corn, and good reason then the Parson should have some profit of them.

3. In some cases, as where Gentlemen have turned their Fields into Conigers, and laid down in the Tillage, the loss of the Parson hath been notorious, and the case grievous hurtful to the Parson and Commonwealth, profitable to none but the Owner of the Land; these cases deserve the favour.

4. We conceive the Parson will have no remedy in this case by Law; and that in all these cases there is nothing to be had but what the custome or usage yields; for Deer and Coneys being wild are not reckoned a mans own till they are catched. *Fera Naturalia.* And a man is to pay Tythe of nothing whereof he hath not

*Matters of  
pleasure.*

a property, except only the personal Tythe, which is a small matter. When Pheasants, Partridges, Swans, and such like wild things of profit become tame, it seems they must pay Tythe, but not otherwise. And for such things of pleasure as are of no profit, as Hawks, Hounds, Apes, Thrushes, Poppingjays, and the like, no Tythe shall be paid of these.

Yet see *More, Case 559.*  
*For Turkies* That Tythes are not payable for tame Turkies, Pheasants, or Partridges, nor for their Eggs, *More, Case 322.*

And for a Park disparked, as where a Park pays ten shillings for all Tythe, and it is now disparked and sown with Corn, here the ten shillings only shall be paid. But if the prescription be for the Deer, and herbage of the Park, and not for all the Park, and it be disparked and sown with Corn, Tythes in kind shall be paid.

((49))

So where one shoulder of every Deer is prescribed to be paid for all the Tythes; and it is dispensed, herewith in kind shall be paid. And if the prescription be to pay ten shillings and a shoulder of every Deer, it is dispensed; here it shall pay Tythe in kind, and not the ten shillings only. *Idore, Case 1177.* and in *Case 1186.*

The Vicar had two shillings yearly, and the shoulder of every third Deer killed in the Park, and the Park was dispensed. And the Judges divided of the point whether the Vicar should have Tythes in kind. See

in *1292* but do about a Tythes it seems are to be paid *For Pigeons.* *Idore, Case 1270.*

Tythes is to be paid of the *Of Plants,* *Plants,* Herbs, Seeds, and of Wood, Saffron, Flax, Hemp, Cloths, Rape, and the like: and of Pot-herbs, and *de Cur-* *ation* of places adjoining to *Mansion Houses* applied to *Seeds* and *Herbs* as they be

D

per-

((50))

perceived and taken in Gardens  
or in the Fields: either of the  
Seed, beof the Herb before the  
feeding time. Unless the Par-  
son agree for it; Tythe must be  
paid of it.

Tything  
able.

Question: 15. And of those  
when the Owner doth receive  
his nine parts he must set forth  
the tenth part for the Par-  
son.

Personal  
Tythe.  
Trades and  
labours.

Some Tythe hath been by  
usage paid in the nature of per-  
sonal Tythe for mens Trades and  
labours. So Fishers, Fowlers,  
Hawkers, and the like, not  
such as fish, hunt, and fowle  
for pleasure; but such as make  
a Trade of, and get by fishing,  
hunting, and fowling, have  
paid. So Carpenters, Masons,  
and all Handicrafts men have  
paid, so Merchants, Mercers,  
Drapers, and all Tradesmen  
so men-servants and Maids  
servants have paid some fine  
matter in the nature of an Of-  
fering, as the tenth of their  
clear gain once a year to the

Parson

Parson: and this is to be paid  
 still according to the custom of  
 the place.

And for any other things,  
 or for things Tythesable out  
 of any Land, which by the  
 Laws, by any Priviledge, Pre-  
 scription or Composition ought  
 to be discharged, no Tythe is  
 to be paid.

See more of this, and how  
 these Tythes shall be paid, Chap.  
 Sect. 3.

## CH A P. VI.

*When, where, and how Tythes  
 payable must be paid and set  
 forth, and when the Par-  
 son, &c. may take them.*

FOR answer to this Que-  
 stion in general, the Law  
 is that all Tythes and Church-  
 dues are to be yielded and paid  
 according to the usage and cu-

Some of the place where they  
 are to be paid. *Stat. 27 H. 8. 20.*  
*32 H. 8. 7.* And for Predial  
 Tythe, the tenth part of the pro-  
 fits are to be set forth and divi-  
 ded from the nine parts in the  
 place where they grow, before  
 the Owner take away his part  
 thereof: and the Owner is to  
 send to the Parson, who is to  
 send his servant when the Tythe  
 is to be severed, and see that it be  
 justly done, and then the Law  
 doth give him a reasonable time  
 to take it away. And if Tythe be  
 once set out and divided, the  
 Parson, not the Parishioner must  
 look to it: for he must bear the  
 loss of it, if any come to it. And  
 this setting out of the Tythe, the  
 Law saith must be effectual;  
 and therefore if the Owner set  
 out his Tythe and then take it  
 away again, this is not a good  
 payment of his Tythe: and if  
 the Owner sell the whole to  
 another before the Tythe be set  
 out, with an agreement to de-  
 ceive the Parson; this is fraud

and not allowed for a good payment in Law. And this must be heeded as to the manner of Tything. That the custome of the place is to be observed, for in some places the custome is to leave the Tythe in grass in swathes, in other places in windowes, in other places in grass-cocks, and in other places in hay-cocks, and either way it is good. So for the time when, and place where, the custome of the place must be followed, but the Parson shall have reasonable time to take it away. *Broo. Tresp.*

125. *Copk. 2 part Instis. 610.*

To give to the Parson the tenth of Trees Acre of wood in a Coppice or *and Woods* the tenth cord (if the cords be equal) is a good payment and setting forth of his Tythe, especially if it be the custom of Tything wood in the Countrey.

The tythe of the Mast of Oak and Beech, if it be sold, must be answered by the tenth penny; if it be eaten by pigs, the tenth of the worth thereof must be

answered. And the most reasonable way of payment for any thing sold, is to pay the Parson the tenth penny of the money made thereof.

*Of Houses  
in Lon-  
don,*

The payment of Tythes and Church Duties in the City of London, which is 2 s. 9. d. in the pound of the rent of their Houses, is to be made according to the usage there. Stat. 27. H. 8. 20. and 32. H. 8. 7: 37. H. 8. 12. Cook 11, 15.

*Sec. 1.  
Of Mills.*

The Tythe of the new corn Mill must not be the Tenth penny of the Rent, but the tenth measure of the Corn, or the tenth toll-dish, if there be no custom in it. But the Millard for his Fulling-mill, Rape-mill, Paper-mill, Iron, Powder, Lead, Edge, Copper, and Tin-mills, and so for an ancient Corn-mill, is to pay only personal Tythe, as for a Handicraft or Faculty. Past. 17 Jac. Johnsons Case, Fitz. Nat. Bro. 41. G. Cook 1. 44. And if a rate Tythe be paid for two Mills in

ONE



one house, and one of them is  
made a Corn-mill, in this case  
Tythe shall be paid in kind for  
the Mill. And if one pair of  
Mill-stones be turned into two  
pair of Mill-stones, now both  
of them must pay Tythe, and  
the privilege is lost. *Bract.*  
*lib. 2. fol. 213. to. 20. 1. 1. 1. 1.*

The Tythe of hay may be sea  
out and delivered in swathes, *Of Grass*  
windrows, or cocks, as the cus- *cut or ca-*  
tom.

Some of the place is. *2. 1. 1. 1. 1.*  
The Tythe of the fruit of Apple- *Fruit, &c.*  
trees, Bear-trees, and the like *trees, as*  
trees, are to be seculd and *Apples, &c.*

livered when they are newly  
gathered up. And if then the  
Owner do not give the Parson  
notice and send them out, and  
they be by his means lost or im-  
paired the Owner is chargeable  
to the Parson in treble dama-  
ges. The common course of

leading out and delivering of corn  
is by the common law, is *1. 1. 1. 1. 1.*  
by the tenth shuck, cock, or  
sheaf, but if the Custom of the  
place be otherwise the Parson

must

D: 4.

must

must sit down by it, and if there be a custome to put the corn into shocks, and within every shock be ten sheaves, and that the Parson must have the tenth shock, it must be done by two Justices, B. R. But without a speciall custome binding the Owner of the Land, he is not bound to let the Parsons part of the corn up an end in shocks. *See Smiths Case, Co. B. the Court.*

*offered and  
herb  
of seed and  
herb* The Tythe seeds and herbs of gardens and fields, as Rape, Hemp, Flax, Parsly, Fenel, and the like, and of Sage, Mints, Onions, Leeks, and the like, either of the seed or of the herb before the seed time, this must be paid at the time when the Owner doth receive in his nine parts thereof.

*Sect. 1.  
of calves  
and Lambs,  
or Pigs.* The time when the Calves and Lambs are to be paid and delivered, is when they are weanable, and able to live without the Dam, and unless there be any custome hereto against

against the Parson, at this time  
all these young things are to be  
delivered. And if the owner sell  
any Calf or Lamb, in most places  
the Parson is to have the tenth  
penny of the money, and so he  
must, if there be nothing in  
the custome against it. And  
if the owner kill a Calf, in some  
places the Parson hath the right  
shoulder, and the custome must  
be yielded to as reasonable;  
if any thing though never so  
little be paid for it, otherwise  
not.

If a parishioner have but nine  
Pigs or six Calves in one year,  
the Parson can have no Tythe in  
kind that year for them, but by a  
special custome to entitle him to  
it. And therefore there the Par-  
son must either have his Tythe in  
money *pro rata*, for that year, or  
he must have his Tythe in kind  
the next year, and so reckon  
both years together, as the cu-  
stome of the place is. *M. 7.*

*Fac. B. R.*

And if a Parishioner have but

*D. 5*

one

one Cow, or milk his Cow every second day only, so that he can make no cheese in these cases, the custom of the place is to be observed, so that thereby something be to be paid out. If a Customs to pay nothing will not be good. So for Colts and Kids, when they are under the number of Tythes in kind. And if there be no custom in the place for it. The Parson will have the tenth when ever it comes. M. 7. Fac. C. B.

Of milk  
and cheese.

The Tythe of milk and cheese is to be paid in the season thereof, and so long and so soon as either of them is taken by the Parishioner.

Bees.

The tenth measure of honey and the tenth weight of wax, not the tenth Bee, nor the tenth swarm of Bees is to be paid for Bees.

Of hens,  
ducks wild  
and tame.

The Tythe of Chicken and eggs, of all kind of game birds, or fowl, as Swans, Hens, Ducks, Geese, they are to be delivered and paid, or that which

which is paid for them, according to the custom of the place. But for wild Swans, Geese, and Ducks, if they be taken in, and from a certain and known place, they are said to be Tythesable as predial Tythes. But if from uncertain and unknown places, they are said to be Personal Tythes. But I suppose no Tythe is to be paid in either case.

For personal Tythes, which is for Trades, Crafts, and manual Occupations, and the profit made thereby: It is provided by a special Law, that all such as use trading, buying and selling, handicraft, (except common labourers) shall pay their Tythes as they were used to be paid forty years before the Statute of h. 6. and in case of right they thought to be paid. And for this the Statute longer doth last at the present Easter (in most places the usual time of payment for small Tythes) to pay a small sum of money.

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money to the Parson or Vicar.  
And according to the custome  
of the place may be to pay, for  
without a custom for it nothing  
at this day is to be paid for this  
by three Judges. 160. B. 27. 7. 11.

And for all, for any of these  
things, in case where the Ow-  
ner may let or sell the thing of  
which the Tythe is to be had, the  
best way is to let the Parson or  
Vicar have the tenth penny made  
by the sale, as they have gene-  
rally of grounds let to strangers  
out of the Parish, in which case  
the Parson hath commonly; and  
must have, if there be no custom  
against it, the tenth penny of the  
Rent.

But in no case the Parson or  
Vicar may take his Tythe before  
the same be severed from the  
nine parts and Tythe, and if  
the Owner will not cut his corn  
till it be spoiled, the Parson is  
remediless, as 2. H. 4. cap. 12. of  
160. B. 27. 7. 11. (in most places the  
time of payment is till  
the corn be cut & pay a small  
money

CHAP.

## CHAP. VII.

*who must pay the Tythe that is to be paid, and may be sued for it? and to whom the Tythe must be paid?*

**F**OR answer to the first part of this Question, take these things.

1. That generally he that receiveth the nine parts, is to pay the tenth part to the Parson. And yet if a man that is owner of a Coppice, or other such like thing, and he cut it and sell it all, and in this case the Seller must answer the Parson for his Tythe, and not the Buyer. And therefore if A. cutteth the grass of his ground, and put it all (not setting one Tythe) on a rick on the ground, and three moneths after he sell it away to B. in this case B. cannot be sued for this Tythe.

Art. 18. For By chief Justice

in

in *Alshields Case*. And if one  
sell Under-woods standing,  
the buyes, not the seller must  
answer the Tythe. But the  
Tythe due for sellers before  
the sale, the seller must answer  
for this at law & it not here.

And so every man at this  
day, Alien and Denizen, is  
bound to pay Tythe, that comes  
under a special Exemption and  
Freedom by Composition, Con-  
firmation, prescription, or some  
Act of Parliament.

Yet the King and his Paten-  
tees in some cases are exempt  
from it. Such persons as hold any  
of the Abbeyes lands, that be-  
fore the dissolution of the Abbeyes  
paid no Tythes, are at this day  
to pay no Tythes for these lands  
3<sup>d</sup> H. 8. Cap. 13.

And he that receives the tithes  
pays for himself, is to pay the  
Tenth part to the Parson. If a man buy Under-wood  
of me, not Corn that is Tythe-  
able



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able, on the ground standing, he  
that buyes, and not the seller must pay  
the Tythe. But of other things it  
seems the Law is otherwise. As  
where one sell his sheep, whereof  
the Parson is to have Rate Tythe,  
the seller and not the buyer must  
pay the Tythe for this. *Dier. 2.  
374. 171.*

5. If one that is Owner of a  
Coppice, Wood, or any such  
like thing, and he cut it and  
sell it altogether, in this case  
the seller and not the buyer must  
answer the Tythe to the Parson.  
And if one cut all the grass  
of his ground, and put in a rick  
there, and three Moneths after  
he sell it away, the buyer is  
not to answer for the Tythe  
but the seller. *Hill. 16. 710.* by  
the chief Justice in *Assizes  
Case.*

And if one sell Under-wood  
standing, the buyer not the seller  
must pay the Tythe. But the  
Tythe due for Sellers before the  
sale the seller must answer for this.

6. The

6. The persons chargeable with Parsonal Tythes that are to be paid of custome are such as have been used to pay them. But no Parsonal Tythe is to be taken of a Robber, Usurer, Harlot, or the like, for they gain by their sin.

Tything-  
sable.

7. If a Parishioner die before he pay his Tythe, his Executor, if he have assets, must pay it.

8. If a Parishioner let or sell his ground or herbage, it is said the Parson may sue the Owner of the ground, or the Owner of the Cattel, at his choice, which is reasonable, if the usage be not against it.

9. If Cattel be pawned or pledged the Gage must pay Tythe for them. But if I deliver my goods to H. to be re-delivered to me, I must pay Tythe for them.

And for answer to the second part of this Question, these things are to be known.

1. The Tythes must be paid

to him that hath right to them,  
be he lay-man, as an impro-  
priator, or a Clergy-man (as  
we have called them) and be he  
Parson or Vicar of the place.

2. The Rule generally is this,  
That the Tythe must be paid to  
the Parson or Vicar of the Parish  
wherein it ariseth, and not  
the Parson or Vicar of another  
Parish.

3. The Tythe hapning in  
the time of vacation, the suc-  
ceeding Parson, is to have it,  
but they that gather it in may  
keep up so much thereof, as  
to pay them their charge in the  
collection thereof, and to Mi-  
nisters, that did serve the Cure  
there. And if one be put into  
a place, and then be removed,  
and another is put in, the  
first of these shall have the  
Tythes that hapned in the va-  
cation time. *Hil. 18. Jac. Woods*

4. If any man have Castell  
Tytheable feeding in any waste,  
or place which is not certainly  
known.

known to be in any Parish, the Tythe thereof shall be paid to the Parson of the place where the Owner of the Cattel doth dwell.

3. If a man living in the Parish of A. being a Common Fisher, Fowler, or Hunter, Fish, Fowl or Hunt in the grounds of B. in B. and take Fish there, if this were free and without reward in A. then it is a personal Tythe, that must be paid to the Parson of A. but if A. had money or reward for this, then it is not A. must pay the Parson of B. as for a predial Tythe.

6. Personal Tythes are all wayes to be paid to the Parson or Vicar of that place where the person that is to pay the Tythes doth dwell.

7. If the Parson or Vicar pay it to one that comes into the place by Simony it is at his own peril if he be forced to pay it again.

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8. One that is wrongfully Collated

Collated by the Bishop may be  
such a person incumbent as is  
capable of Tythe and may sue for  
them. *Hob. 362.*

9. The Action for treble da-  
mages upon the Statute of 2 E. 6.  
For setting forth of Tythes may  
be had, and is to be sued in the  
Temporal Courts. *Idem, Case*

994.  
10. A Clerk of a Parish can-  
not prescribe to have five shil-  
lings a year of the Parson for  
the Tythes of a place in the Pa-  
rish. But upon a Composition  
between the Parson and Vicar  
such a prescription may be good.  
*Idem, Case 1274.*

11. The Corn was growing  
upon glebe land of the Vicar,  
which was discharged of Tythes  
being in his own hands, but  
when let out did pay Tythe.  
The Vicar tilled the land, and  
sowed before it was covered.  
And it was a Question if his Ex-  
ecutors should pay Tythes. *Hob.*

12. That by Common Law

no Lay person was capable of Tythe but by way of discharge and composition with the Vicar. But now Lay-men may have Tythe as well as Clergy-men. Co. 4. 79.

13. A Parson or Vicar may have Tythe out of his Parish by a special prescription, or he may prescribe to have a certain sum of Money for Tythes within his Parish, of any certain man there in lieu of Tythes; or another man may have a Title to a portion of Tythes by Prescription. Or a man may have his own Tythe of the Parson by agreement between them for the Parsons life, if they agree so. Co. 1119. 2. 43.

14. If one be put into a Benefice, and then he is removed and another put in; in this case, he that is first put in shall have the Tythes that happen in the Vacation time. Hil. 18.

*Just. Hobbs Case.*

15. That one wrongfully Collated by the Bishop, is such an Incumbent as is capable of Tythes

Tythes, and may sue for them,  
*E. 6. 302.*

16. None are to pay Tythes for  
 land discharged or privileged  
 from payment. *E. 6. Cap. 23.*

17. The Tythes that come  
 out of a ground not in any  
 Parish the King shall have.

18. If one have Cattel Tythable  
 going in a great waste or Com-  
 mon, whereof the Parish is not  
 certainly known, he shall pay  
 the Tythes of his Cattel feeding  
 there to the Parson or Vicar  
 of the place, where the Owner  
 of the Beasts or Cattel dwell  
*E. 6. Cap. 13.*

19. Where Beasts or Cattel  
 goe in one Parish one half of  
 the year, and in another Parish  
 another part of the year, In  
 this case each person of each  
 Parish shall have the time, for  
 the Beasts were in either  
 Parish, and so for more or  
 less time if it be but the space  
 of a Moneth. And if it be less  
 than a Moneth it seems no  
 Tythe is payable. And whe-  
 ther

ther the Cattel be there strayed  
or otherwise it is all one as in  
the Parson, unless it be in the  
case of common Term. 7. Jac.  
R. 2. *Procurator* *Disseisin* *7. Jac.*

### CHAP. VIII.

*Which way the Owner of  
Tythes, and such like things  
may recover them being  
detained.*

**F**OR answer to this, we  
are to know, that by the  
ancient Law of the Nation,  
Tythes were not recoverable  
by any man in any place but in  
the spiritual Court, and there  
by no person, but such as  
they called spiritual persons,  
or Clergy-men, and this Eccle-  
siastical Court is gone. But  
they are now recoverable by  
all sorts of men alike, and in  
these ways. First for Predial  
Tythes, such as are the Tythe  
of



of wood & grass, & fruit, hay  
and the like dividable things  
if these be not duly and truly  
divided and set forth, as be-  
fore is shewed, they ought to  
be, the Parson or Vicar may  
sue for them in any of the  
Courts by an Action of Debt,  
wherein he shall recover treble  
damages upon the Statute of  
Ed. 6.

But for lesser Tythes of wool  
Lamb, and the like, no Action  
will lye upon this statute, nor  
for money given to the Parson  
in lieu of them. But for the  
one and the other, the party  
grieved may at this day sue in  
the Chancery or in the Exche-  
quer, or before two Justices  
of the Peace, who in most cases  
for all Tythe, Offerings, Ob-  
lations, & Oblivations, & rates  
for Tythes, and all arrears  
thereof, are to give relief,  
Stat. 27. H. 8. 20. 1. Ed. 6. 13.  
32. H. 8. 7. Cook upon Lit. 159.

And if the Tythe be once se-  
wed and set forth, and they  
be

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be after taken away by the Owner of the land or a stranger; in this case the Parson may have an Action of Trespas against him. *Brow. Dist. 6. Brownl. 2. Part 30.*

If one prescribe to pay money in satisfaction of Tythes, he must give in Evidence that he himself being Parson retained the money. *Hob. 697.*

And the Farmor of a Rectory he may sue upon the statute for not setting out Tythes. *Mores Case 192.*

A Surmise was that the Parson had twenty acres of Pasture and a Close of wood in lieu of Tythes, and the proof was only for the Pasture, and yet held good. *Mores Case 1284.*

So where the surmise is that four shillings had been paid in satisfaction and the proof was of four shillings six pence, and held good enough. *Mores Case 1284.*

And in the Tythe dispute it is held that the Tythe is due to the Parson and not to the Farmor. *CHAP.*

## C H A P. IX.

*In what Case, and how a person or place may be quit and discharged of Tythes: and what shall be a good discharge or not for the Matter or Manner of payment of Tythes.*

**S**piritual persons were some of them formerly discharged of Tythe by their Order, but there are no such discharges now; but a discharge of Tythes may be at this day by the custome of a Country, or by a prescription, or by a Composition, which at first was made by and between the Parson, Patron, and Ordinary, and another, or by an alteration of the place out of which the Tythe doth come, or by an Act of Parliament, and by a unity of possession. *Cook 1 part 33. & 3 Ed. 6. 13. 32 H. 8. 7. Cook 44.*  
 E Or

Or by Priviledge, as certain Religious Orders, Templars, and others; of which there are none with us. And therefore no such discharge can be amongst us at this day, *Brownlow's 2 Part 33.* Or they may be suspended for a certain time, and revived again. Of all which see examples in the Cases that follow.

A man may be discharged of payment of Tythe by a custom of prescription. Wherein these things are to be known.

1. Custome and prescription do differ but little; custom goes to a place or Countrey, and prescription to a Person.

By custom  
or Prescription;  
and  
what is  
good or not.

2. A custome applyed to a Countrey to pay no Tythe, in some cases, as the custome for the Wild, being forty Parishes in *Sussex*, to pay no Tythe, is good. But generally such a custom is not good, and a prescription to pay no Tythe, nor any thing in lieu of it, is not good, nor will it discharge, though nothing can be proved to be paid within the  
time

time of memory. *D. & St.* 171.

167. *Broc. Prescript.* 92. *Cook*

44. And yet one may shew a discharge of his Land another way, which will amount to the payment of no Tythe, nor nothing for it.

3. But any man may prescribe *de modo decimandi*; i. e. to pay money, or other things in lieu of the Tythe in kind for a Mannor, Farm, or piece of Land, and if he can prove this time out of mind, this will discharge him,

*Cook* 1. 44. 45. And there-

fore a Prescription to pay four pence, or any other sum of mo-

ney for all his Tythe whatso-

ever, or all his Tythe Hay, or all

his Tythe Corn in such a Farm,

or such a Close, is good. If one

prescribe that he is to put the

Corn of the ground in Hillocks

or Cocks, &c. And that for

the Parson is to have no

Tythe Corn every second year,

or to have no Tythe in some

part of the ground, this is good.

And if he prescribe to pay the

B 2      tenth

tenth fleece of Wool, and for  
 this to be discharged of the Tythe  
 of the locks, this is a good  
 Prescription, 36, 37 *Eliz. Co.*  
*B. Jese's Case*. But if one  
 prescribe, that because he doth  
 pay tythe Hay, he is to pay no  
 tythe Corn; or because he pay-  
 eth tythe Corn, he is to pay no  
 Tythe of his Cattell, this is not  
 good. *Smith's Case*. *Hill*, 8  
*Jac. B. R.* So if one prescribe  
 to be discharged of Tythes in  
 one place, because he payeth  
 Tythes in another place; or to  
 be discharged of Tythes of  
 Lambs, because he payeth Tythe  
 of wool; or to be discharged of  
 Tythes of other Cattell, because  
 he payeth twelve pence for a  
 Cow, these are not good pre-  
 scriptions. *Fleetwood's Case*  
 7 *Jac. Co. B.* If a Custom be  
 alledged, That the Parson shall  
 have but the tenth sheaf of wheat  
 for the Tythe of all manner  
 Corn and Grain, this is not a  
 good Custom. *Mic. 11. Jac.*  
*Co. B. Jacks Case*, 38 *Eliz.*  
*Co. B.*

*Co. B. Adjudg.* So a custom was alledged, That the Owners of a Farm had been used time out of mind, to take back thirty sheafs of their Tythe Corn again after it was set out, to their own use; this was disallowed.

4. A Prescription to pay a shoulder of Buck or Doe when they are killed, in lieu of all the Tythe of a Park, is good, and will discharge the Park. 3, 7, & 37 *Eliz. Shipdam's Case*. And although after the Park be discharged, and converted into Tillage or Hop-ground, yet it is held that the Parson shall not have Tythe in kind, but the discharge shall continue, *M. 5.*

*Fac. Co. B. Adjudg. M. 11.*

*Fac. Co. B. Conqueror's Case.*

5. A prescription to pay a less part than the Tenth, part may be good and binding. *sect. 2.*

6. A Prescription that if one have less than seven Lambs, he shall pay but pence a piece for them, is good, *Curia 7. Fac. B. R. Patches Case. E 3 7. A.*

7. A Prescription to be discharged of Tythes for every house in *London*, in lieu of twelve pence of the Rent made of the house, is good. *Cook II. 16.* And so for any other thing that may be conceived to have a reasonable Commencement, the Law will admit it.

8. One may prescribe, That he, and all those whose Estates he hath in the Mannor of *Dale* in *Dale*, time out of mind, have paid to the Parson of *Dale* for the time being, a certain Pension yearly for the maintenance of Divine Service there, in satisfaction of all the Tythes arising and growing within the Mannor of *Dale*; and prescribes further, That he, and all those whose Estates he hath in the said Mannor, time out of mind, have been used in regard of the said Pension so paid to the Parson, to have all the Tythes arising and arising within the said Mannor,



nots, or any part of it, viz. of all the Lands held of the said Mannor, or any parcel of it; this is a good Prescription, and may have a reasonable beginning thus, That the Lord was seized of all the Mannor before the Tenancies derived out of it; and by some good Composition or grant between him, the Parson, Patron and Ordinary, it was granted to him in lieu of this money, which must be intended, because time out of mind; it hath been so paid. *Cook 7. 45.* But without some special matter alledged, a Lord cannot prescribe after this manner in him and all those, &c. generally.

9. Also a Parishioner may be discharged of Tythe by an agreement with the Parson; if he be a spiritual person, he may discharge it for his life; if he be an Impropiator, he may discharge it for all the time he hath the Parsonage. But a

spiritual person cannot by his agreement bind his Successors. And payment of a sum of money in lieu and recompence of Tythe for fifty years, or thereabouts, is held a reasonable time to make a Prescription. *Cook upon Lit. 14. Crompt. Jur. 77. Dyer 7, 9.*

*Seft. 3.*  
By an alteration of the place or thing out of which the Tythe doth come, or by other alteration.

Tythe may be discharged by the alteration of the place or thing out of which the Tythe is to come; for the opening of which take these things.

*whether gone or not.*

1. If one prescribe to be discharged of payment of Tythe by or for such a ground, or the Tythe of Corn of such a ground, and the Owner change the nature of the ground; the pasture into tillage, or tillage into pasture; in these cases the Prescription is gone. *Hill. 7. Jac. C. R. Shipton's Case, Adjudg.* But if the Prescriptions be general, four pence for all manner of Tythe arising in such a Ground, there the alteration will not hurt the Prescription.

So

So it is if one prescribe to pay  
 the Shoulder of every Buck and  
 Deer of his Park for all manner  
 of Tythe of the Park, and the  
 Park be after disparked, and  
 sown to Corn, it is said the  
 Prescription is gone, and that  
 Tythes must not be paid in kind,  
 but if any part of it remain a  
 Park, and the rest only be sown-  
 ed, it is otherwise, 36, 37 Eliz.  
*Shipdam's Park in Norfolk.* So  
 it is said, if all the Park be suf-  
 fered to fall down, which is a  
 disparking in Law, of the Park,  
 yet the same doth not destroy  
 the manner of Tything, for the  
 same may be a Park again: But  
 some doubt of this. And a dif-  
 ference hath been taken, where  
 a Prescription runs to so many  
 acres of Land certain, for in  
 that case the *Modus* continueth,  
 and where to the Park in the  
 name of a Park, in which case  
 it is gone if it be disparked,  
*Pascb. 19 Jac. Co. B. Pools Case,*  
*and in Broml. Rep. 1 Part, Pasc,*  
*10 Jac. Co. B. 35.* It is doubted

whether the Tythe be not gone in both cases; and held, That if a man can prescribe for so many Bucks, that this Park is discharged, and if it be disparaged, that the Prescription is not gone.

2. And if two Folling Mills be under one roof, and a rate Tythe be paid for the Mills, (which is a kind of prescription) and after the Mills are altered, and made into one Corn Mill, in this case the prescription is gone, and Tythe shall not be paid in kind. So if there be but one pair of Stones in the Mill, and after there is another pair of Stones put in the Mill, now Tythe must be paid in kind, and the manner of Tything is gone; *Brownl. Rep. 1. Part. Pasch. 10 Jac. 31.*

3. If I have the Tythe of the Hay of a close, or all manner of Tythe there, and the Owner of the ground turn it from Meadow to tillage, or to Hops, or the like, or turn it from tillage

to pasture, the Tythe is not gone but shall be paid in kind as it falleth. So if one turn Wood ground into Meadow or Tillage, the Owner shall pay Tythe in kind, and Tythes is not lost hereby; onely if it fall out to be within the case of barren Heath, he shall pay for seven years no more than was payd formerly for it. See it before, *18 Jac. B. R. Court in Taxters Case.*

3. If one be to pay a sum of Money for the Tythe of a piece of Ground; and the Ground be after turned to Houses and Gardens, in this case the manner of Tything doth continue. *Book 11. 16.*

5. If one turn his Pasture into Coniger, and make coney-burrows in it, the Tythe will not be gone. But I conceive, it doth continue as it did for the manner of Tything as before, and no new manner of Tything. See before Tythe of Coneys, *11 Jac. B. R.*

6. If

6. If the Vicar keep the Glebe in his own hands, it is said, that so long he is to pay no Tythe to the Parson impropriate. But if he lease it to another, then the Lessee must pay Tythe to him; & if he sow the Land, that he must pay Tythe as other men, *Brownl. Rep. 69.*

7. If a Parson impropriate keep his Glebe in his own hands, he cannot pay Tythe to himself. But if he sell or let it to another, he shall pay Tythe as other men. And if a Parson purchase Land within his Rectory, no Tythe is to be paid for this whiles it is in his own hands. But if he after Lease the Parsonage, his Lessee shall have Tythe of this newly purchased Land. And if he make a Feoffment or Lease of the purchased Land, his Feoffee or Lessee must pay Tythe again, *Gooden upon Litt. 139. 11. 14. Brownl. Dissem. 17. Dyer 43.*

8. And if one purchase a Parsonage and Manour in the Parish discharged of Tythes, and then

then Lease part of the Demesnes of the Mannor, it is said the Lessor shall have Tythe of this part. *Broo. Dismes* 17. *Sed quere* of this.

8. If Land lye in a Forrest in any Parish, and is Tythe-free, and the Forrest be disforested, now it shall pay Tythe in kind. *Crompt. Jur.* 52. *Lord Ch. Bacon at Sarum Assises.*

The alteration of payment (as if instead of the Money to be paid, another sum, or Tythes in kind have been paid for twenty years past) will not destroy the Prescription. *Cook upon Lit.* 14. *Dyer* 7.

9. That where Lands are once discharged of Tythes by a *Modus Decimandi*, it is a *Quere* if they shall revive again upon the Failure of the *Modus*. As where there is a *Modus Decimandi*, for a Park, two shillings a year, and a shoulder of every third Deer killed in the Park, and the Park is disparked. See for this, *Hob.*

10. That a Custome to pay Tythes truly, without view of the Parson, is not good, for no man may be his own Judge or Divider, *Hob. 107.*

11. That a Custome cannot be discharged by a verbal agreement for Money, *Hob. 176.*

12. An Abbot discharged of Tythes; *Quamdiu in manibus propriis*, makes a Gift in tail, and the Donee and the Issue shall pay Tythes, *Hob. 248.* So though the Tenant in tail suffer a Recovery, yet he shall pay Tythes: But if the Land return to the Abbot, it is discharged again, *Hob. 248.*

Lands may be discharged from payment of Tythes by annuity of possession of the Parsonage, and Lands which did pay Tythes by an appropriation or otherwise, in the hands of Religious and Ecclesiastical persons (as they were called.) So that now at this day by the Statute of 31 H. 8. 13. Such an unity in the said Religious Houses and Persons, will



will be a discharge to all Patentees from the payment of Tythes of Lands that came to the Crown by the same Statute. But then this unity in the said Religious persons must have been *Iusta*, obtained by Right; for if either the Parsonage, Vicarage, Tythes, or Lands, had come or been united to their Houses by Disseisings, or other tortious or unlawful acts, this had not been a good discharge within the Statute. 2. It must have been *Aequalis*; there must have been a Fee-simple both in the Lands out of which the Tythes were to be paid, and in the Parsonage or Vicarage in them; for if the Abbots, Priors, or other Religious persons had held but by Lease, that had not been such a unity as the Statute intended. 3. It must have been *Libera*, free from the payment of any Tythe; for if the Farmers or Tenants at will, or for years, had paid Tythes, that had not been a sufficient unity to have discharged.

discharged the Land. 4. And lastly, It must have been *Perpetu-  
tans* time out of mind. And then for the infinite impossibility, and impossible infiniteness that such immunities and discharges, that such Religious persons and houses had before time of memory could not be known; such a unity had been a good discharge of the Lands in their own hands. And if the Monastery were built in the time of memory, or appropriated within the time of memory, and Tythe were paid before this, it will not serve turn to discharge it. And at this day such an unity is a good discharge for the Kings Patentees; with the Statute of 31. H. 8. But such Lands as came to the Crown by the Statute of 27. H. 8. of Dissolution, must at this day pay Tythes, although the Lands in the hands of such Religious persons or houses were discharged from the payment of Tythes, for the privileges being personal privileges, were

were extinguished by the Statute of Dissolution, and there are no words in that Statute to save them. *Stat. 31 H. 8. 13. 7 H. 4. 7. 32 H. 8. 7. Cook 13. 14. 2. 42. Dyer 278. 349. 277.*

And for a further light herein, take these Cases following. In a Prohibition, the question being for the Tythes of an aftermoth; the Plaintiff prescribed to make the first crop into little Cocks in lieu of all Tythes of the first and second Crop; and it was held not good. But if he had prescribed to make it into great Cocks, or to bring it into the Barn for the Parson; this had been a good Prescription, *More, Case 1048.*

A Parson of a Church in London sued a Parishioner for Tythes of certain Stables there, and libelled, That of common right and by Prescription time out of mind the Parsons there used to have a *Modus Decimandi* for the Houses, Stables, and Buildings; that is to say, after the tenth

part

part of the yearly rent or value of the same; and it was held not good, *Hob. 11.*

Tythes are not discharged in right (though in payment) by unity of possession, *Hob. 44. 297.*

A Custome was alledged by the Parson, That the occupiers of the Meadow did use to cut the Grass and ted it, and then to gather it to winnows, and then to put it into Grass Cocks in equal parts without fraud, and then to set out every tenth Cock great or small to the Parson, in full satisfaction, as well of the first as of the latter making; and it was held a good Custome, *Hob. 250.*

There are five wayes whereby the Abbey-lands came to be holden discharged of Tythes, by Composition, Bull, or Canon, Order, prescription of discharge and unity of possession of Parsonage and Land time out of mind together without payment of Tythes, *Hob. 308, 309.* But the unity that doth discharge, must

must be (as is said.) It must not be pleaded as a discharge of Tythes, but as a discharge of the payment of Tythes. It must be by Prescription time out of mind, without any allegation, That the Abbot or his Farmer paid Tythe, for that will destroy the Prescription, *Hob. 296. 307.* But for this see *Adm. Cases 140. 151.*

If one be sued for Tythes in the Spiritual Court where none are due, as for Tythes in kind of a Park disparked, for which formerly a *Modus* hath been paid. For all the Tythes where the King or Patenteer hath right to two parts, *Hob. 39. 115.* Or where one sues as Parson, who came in by Symony, and the Parishioner pleads it, and the Court will not allow it, *Hob. 163.* Or where the Parson sues for Wood not Tytheable, or where a Suit is for the second Hay after one hath paid Tythe of the first, or the like, there the party grieved may have a Prohibition.

Prohibition out of the Courts  
at *Westminster* to relieve himself,  
*Hob. 219. More, Case 1264.*

Where the Suit is in the Spi-  
ritual Court upon a *Modus Den-*  
*ciandi*, if the *Modus* be denyed,  
a Prohibition will lye also in  
this case till it be tryed.

Copy-hold Land appertaining  
to a Monastery, is not discharged  
by unity, *More, Case 256.*  
Unity dischargeth Monastery  
Lands of Tythes if they were dis-  
charged at the time of the Dissol-  
ution. *More, Case 574.*

An Abbot before the Dissolu-  
tion made a Lease for years of the  
Mannor and Rectory, the Lessee  
made an inferiour Lease of parcel  
of the Mannor, and had Tythes  
of the Lessee at the time of the  
Dissolution, the term expired,  
now this Land for which Tythes  
were so paid is not discharged as  
the residue is but the Unity.  
*More, Case 699.*

Unity of Inheritance without  
occupation together is not a per-  
petual discharge, *More, Case 697.*

no idior

A.

A Prescription to pay the tenth Sheaf, or the tenth Cock for all Tythes of the Land that year in which it is sowed, but he must pay Tythes also of the Rakings, *More, Case 433.*

A Spiritual person may prescribe in *Non Decimando* for him, his Tenants and Farmers, *More, Case 493.*

Tythes of one thing only cannot be in satisfaction of Tythes of the same and other things of another kind, *More, Case 623.*

The Lord of a Mannor may prescribe to pay six pounds in satisfaction of all the Tythe Corn within the Mannor, and may also prescribe to have the tenth Sheaf and Cock to himself, in satisfaction of his payment, *More, Case 685.*

A Copyhold of Inheritance of the Land of a Bishop may prescribe in *Non Decimando*, *More, Case 844.*

A Prescription will not lie against a Composition between the Parson and Vicar, *More, Case 1881.*

*Modus*

*Modus Decimandi* , That he hath paid ten shillings yearly to the Vicar for all Tythes of wood may be good , but if the question be between the Parson and the Vicar , it must be decided in the Spiritual Court, *More, Case 1267*

It is a good Custome to pay Tythe Wooll at Lammas day, though it be due at Shearing, *More, Case 1280.*

To prescribe , That he hath been used to pay a penny, called Hearth penny ; in satisfaction of Tythe for all combustible wood may be good, *More, Case 1280.*

A Custome to pay a half penny for the Wooll, *De ovibus venditis* , after shearing and before *Michaelmas*, is a good Custome, and the Sheep discharged shall be Weathers as well as Ewes, *More, Case 1283.*

If a Prescription be laid to be discharged of locks of Wool , it must be set forth of Wooll casually lost, *Idem.*



## CHAP. X.

*Of other Profits which the Parson and Vicar doth claim.*

**T**Here are some other smal profits which Parsons and Vicars claim, as belonging to their Parsonages and Vicarages, beside Tythe, & money in lieu of Tythe, as Mortuaries, Oblations, Obventions, &c. And as to Mortuaries, *Mortuaries,* these things are to be known.

1. That no Mortuary is to be paid, but where it hath been used to be paid.

2. There shall be but one Mortuary paid, and no more.

3. No person that doth keep house must pay them.

4. No Woman that hath a Husband shall pay them.

5. No Children must pay them.

6. Where they are to be paid, they must be paid after this proportion; *Viz.* He that dyeth, having goods under ten Mark, shall pay nothing; for Goods above that value, and under 30 l. but 3 s. 4 d. for goods above 30 l. and

and under 40 l. 6 s. 8 d. for goods above 40 l. how much ever it be, but 10 s.

7. All this Account must be made only out of the Goods remaining after Debts paid.

8. The Parson of the place where the party dwells, not of the place where he dyeth, must have it *Stat. 21 H. 8. 6. 26 H. 8. 15.*

9. Offerings are to be paid in the place where the party dwelleth at such four Offering days as before the Statute of 2 & 3 E. 6. Cap. 13. within the space of four years then last past had been used for the payment thereof, and in default thereof, at Easter, *Crook 3. Abridg. Case 3159.*

Offerings in London are 1 Groat a House.

Oblations,  
Obventions  
and Offer-  
ings.

There is no more to be said for Obventions, Oblations, and Offerings, which seem to be all one, but that they by the Law now in force are to be paid as formerly they have been, *Stat. 32 H. 8. 7. 27 H. 8. 20. 2 & 3 Edw. 6. 13. Cook 11. 16.*

F I N I S.

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